### Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of	)	
	)	
Consumer Protection in the	)	WC Docket No. 05-271
Broadband Era	)	
	)	

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#### **SUMMARY**

Given the clear social and economic benefits to consumers of ubiquitous broadband Internet access, it is critical that the Commission develop a regulatory environment that will best facilitate continued growth of these services. CTIA urges the Commission to develop a deregulatory national framework for regulating broadband Internet access services regardless of the technology used. Broadband services operate without regard to geographic boundaries and should be subject solely to federal regulation. A balkanized regulatory framework will burden this nascent industry and dampen the deployment of new and innovative technologies. The competitive marketplace is providing the incentives necessary to spur deployment of broadband services while ensuring consumer protection. The Commission should, therefore, regulate broadband providers with a light regulatory touch, if at all.

It is inappropriate at this time to impose burdensome regulations upon broadband providers. While there is no basis to extend rules created for the narrowband POTS world, such as CPNI, slamming, cramming, network outage reporting, section 214 discontinuance, and rate averaging, other changes to Commission regulations are necessary to facilitate the efficient deployment of broadband Internet access services. In particular, the Commission should eliminate inequities and inefficiencies in the universal service and intercarrier compensation systems. The Commission also should ensure that wireless carriers have the Advanced Wireless Services spectrum they need to deploy mobile broadband services, and the Commission should modify its technical rules to ensure they do not discourage deployment of wideband technologies.

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CTIA – The Wireless Association<sup>®</sup> ("CTIA")<sup>1</sup> submits these comments in response to the Notice of Proposed Rulemaking seeking comment on the appropriate regulatory framework for broadband Internet access services.<sup>2</sup> CTIA applauds the Commission's efforts to ensure the rapid deployment of innovative broadband services provided over a growing variety of technology platforms.

#### I. INTRODUCTION

In accordance with its policy of promoting the universal availability of broadband services, CTIA urges the Commission to adopt a deregulatory framework, which will allow new and innovative broadband services to flourish. Since broadband Internet access services are inherently interstate in nature, they should be regulated, if at all, only at the federal level. The Commission should limit regulation of the broadband market to

<sup>&</sup>lt;sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>&</sup>lt;sup>2</sup> Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Report and Order, CC Docket No. 02-33 ("Wireline Broadband Order" or "Order") and Consumer Protection in the Broadband Era, Notice of Proposed Rulemaking, WC Docket No. 05-271 ("Consumer Protection NPRM" or "Notice"), FCC 05-150, (rel. Sept. 23, 2005).

instances of market failure and should mandate specific consumer protection standards only where it is clear the market has not produced satisfactory results. It is inappropriate at this time to impose burdensome regulations upon broadband providers, such as CPNI, slamming, cramming, network outage reporting, section 214 discontinuance, and rate averaging.

### II. WIRELESS BROADBAND SERVICES ARE BEING DEPLOYED AT A RAPID PACE

Over the past few years, wireless licensees made significant investments to deploy next generation technologies across the country.<sup>3</sup> The rise of IP-based networks and the increase in wireless data services has changed the dynamics of the telecommunications market. Broadband services, especially wireless broadband, are exploding across the country.<sup>4</sup> Verizon Wireless has launched a broadband network based on evolution data only ("EV-DO") technology available in 171 metropolitan markets covering more than 140 million people.<sup>5</sup> Sprint Nextel began to roll out its EV-DO technology in mid-2005 and now offers wireless broadband services in 208 markets.<sup>6</sup> In December, Cingular Wireless announced that subscribers could access its BroadbandConnect service through Cingular's new 3G network.<sup>7</sup> Alltel offers its Axcess Broadband service, which provides data rates comparable to wired broadband, in nine metropolitan areas.<sup>8</sup> In addition to its

<sup>&</sup>lt;sup>3</sup> See Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Tenth Report, WT Docket No. 05-71, ¶¶ 106-127 (rel. Sept. 30, 2005) ("Tenth CMRS Competition Report").

<sup>&</sup>lt;sup>4</sup> Tenth CMRS Competition Report at ¶ 119 ("CDMA 1xRTT and/or 1xEVDO technologies have been launched in areas of the country covering 278 million people or roughly 97 percent of the U.S. population, while GPRS, EDGE, and/or UMTS has been launched in areas covering 267 million, or about 94 percent of the U.S. population.")

<sup>&</sup>lt;sup>5</sup> See Verizon Wireless Press Kit available at <a href="http://aboutus.vzw.com/aboutusoverview.html">http://aboutus.vzw.com/aboutusoverview.html</a>.

<sup>&</sup>lt;sup>6</sup> See http://www.sprint.com/business/products/products/wirelessHighSpeedData\_tabC.jsp.

<sup>&</sup>lt;sup>7</sup> Cingular Launches 3G Network, Dec. 6, 2005 available at <a href="http://cingular.mediaroom.com/index.php?s=press\_releases&item=1390">http://cingular.mediaroom.com/index.php?s=press\_releases&item=1390</a>.

<sup>&</sup>lt;sup>8</sup> Alltel Offers Wireless Broadband Service in Little Rock, available at <a href="http://www.alltel.com/corporate/media/news/05/nov/n411nov1705c.html">http://www.alltel.com/corporate/media/news/05/nov/n411nov1705c.html</a>.

extensive network of wireless hotspots, T-Mobile offers mobile Internet access though its GPRS service. According to CTIA's semi-annual wireless industry survey, as of mid-2005, half of all wireless customers had mobile devices that were capable of webbrowsing.

Wireless companies are also deploying broadband technologies other than those designed for mobile devices. Clearwire and Intel have teamed to deploy devices based on Wi-MAX technology that will allow for city-wide wireless broadband Internet access. Sprint and Samsung are working on next-generation wireless networks that use the IEEE 802.16e standard ("Wi-MAX"). These developments illustrate the rapid pace at which the wireless industry is moving to expand the benefits of broadband services to all Americans.

Cable and other wireline broadband providers are deploying broadband as well. In the third quarter of 2005, cable modem service and wireline DSL had increases of 1.2 and 1.4 million subscribers respectively. In December, BellSouth introduced its new FastAccess DSL 6.0 Internet service with download speeds of up to 6 Mbps. Verizon is currently offering its new FiOS Internet Service over its fiber to the premises ("FTTP") network, which provides download speeds of up to 5, 15, and 30 Mbps. Comcast

<sup>&</sup>lt;sup>9</sup> http://www.t-mobile.com/company/about/technology.asp.

<sup>&</sup>lt;sup>10</sup> Sprint and Samsung to Explore Wireless Broadband available at <a href="http://www2.sprint.com/mr/news">http://www2.sprint.com/mr/news</a> dtl.do?id=8220.

<sup>&</sup>lt;sup>11</sup> See Over 40 Million Subscribe to Broadband Internet in the U.S., Leichtman Research Group available at http://www.leichtmanresearch.com/press/111405release.html.

<sup>&</sup>lt;sup>12</sup> BellSouth Introduces Faster High-Speed Internet Service for Businesses, Dec. 5, 2005 available at http://bellsouth.mediaroom.com/index.php?s=press\_releases&item=2724.

<sup>&</sup>lt;sup>13</sup> Verizon Brings Blazing-Fast Connections to Customers in Centerville Area of Fairfax County, Dec. 15, 2005 available at <a href="http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=93123">http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=93123</a>.

announced a 24.2% increase to its high-speed internet subscribers in the third quarter of 2005, resulting in a 19.9% penetration rate among its cable subscribers.<sup>14</sup>

The broadband market is rapidly deploying new and innovative services for the public's benefit. As discussed in more detail below, the Commission should implement a regulatory environment that encourages the continued deployment of new and innovative broadband technologies by implementing a light-handed federal regulatory framework.

# III. THE COMMISSION IS UNIQUELY POSITIONED TO ESTABLISH A CLEARLY DEREGULATORY NATIONAL FRAMEWORK FOR ALL BROADBAND SERVICES.

Wireless broadband services are provided to consumers without regard to geographic boundaries, and are, therefore, inherently interstate in nature. A deregulatory national framework will allow the Commission to facilitate consistent consumer protections for consumers of broadband services, thus maximizing the benefits for customers.

## A. Broadband Internet Access Services Are Inherently Interstate in Nature

Broadband Internet access services are inherently an interstate information service. <sup>15</sup> Broadband services, regardless of the underlying technology, should be subject to the Commission's "long-standing national policy of nonregulation of

<sup>&</sup>lt;sup>14</sup> Comcast Reports Third Quarter 2005 Results, Nov. 3, 2005 available at <a href="http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=777729&highlight="http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=777729&highlight="http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=777729&highlight="http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=777729&highlight="http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=777729&highlight="http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=777729&highlight="http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=777729&highlight="http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=777729&highlight="http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=777729&highlight="http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=777729&highlight="http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=777729&highlight="http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=777729&highlight="http://www.cmcsk.com/phoenix.zhtml">http://www.cmcsk.com/phoenix.zhtml</a>

The See Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Declaratory Ruling and Notice of Proposed Rulemaking, GN Docket No. 00-185, (rel. Mar 15, 2002) ("Cable Modem Ruling") ("Accordingly, we find that cable modem service, an Internet access service, is an information service.") (emphasis added). See also Wireline Broadband Order at ¶ 14 ("[W]e conclude that wireline broadband Internet access service...is appropriately classified as an information service because its providers offer a single, integrated service (i.e., Internet access) to end users.").

information services."<sup>16</sup> Information services are subject solely to federal jurisdiction unless the service is wholly intrastate or the intrastate and interstate components can be separated.<sup>17</sup>

Similar to Commercial Mobile Radio Service ("CMRS"), IP networks are not typically configured to identify the originating or terminating point of a data packet.

Broadband services offer end users the benefit of mobility and the ability to utilize a service or application from any point on the public Internet. Consumers are able to access information from servers and computers that often are in other states and countries. Additionally, IP networks generally do not send data packets over the same routes; rather the information is sent over multiple paths and compiled at the end-point.

Where it is impractical or impossible to identify traffic as interstate or intrastate, the Commission may regulate such services as interstate.<sup>20</sup> The Commission has found that traffic bound for information service providers is properly classified as interstate because the intrastate component cannot be separated from the interstate.<sup>21</sup> The same rationale applies to broadband Internet access traffic, particularly CMRS broadband traffic. As stated above, broadband traffic operates without regard to state or national

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<sup>&</sup>lt;sup>16</sup> Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, Memorandum Opinion and Order, WC Docket No. 03-211, ¶ 21 (rel. Nov 12, 2004) ("Vonage Order").

<sup>&</sup>lt;sup>17</sup> See also Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service, Memorandum Opinion and Order, WC Docket No. 03-45, ¶ 20 (rel. Feb 19, 2004) ("Pulver Order")

<sup>&</sup>lt;sup>18</sup> See Vonage Order at  $\P$  22 (noting that IP-enabled service, because they offer mobility, are "far more similar" to CMRS services than traditional telephone service and require uniform national treatment on many issues.).

<sup>&</sup>lt;sup>19</sup> Wireline Broadband Order at ¶ 35.

<sup>&</sup>lt;sup>20</sup> Pulver Order at  $\P$  22.

<sup>&</sup>lt;sup>21</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-45, Order on Remand and Report and Order, FCC 01-131, ¶ 52 (rel. Apr. 27, 2001) ("Intercarrier Compensation Order").

boundaries, it is inherently interstate in nature, and should be subject solely to federal regulation.

## B. A Deregulatory National Framework Will Allow the Commission to Facilitate Consistent Protections for Consumers of These Services

For services such as broadband that operate without regard to jurisdictional boundaries, exclusive federal regulation makes the most economic sense. This is best illustrated by federal regulation of the CMRS industry. Under a deregulatory federal framework the wireless industry has experienced explosive growth. Since 1985, the total number of CMRS subscribers has increased from roughly 200,000 to over 200 million while the average monthly bill has dropped from \$95 to under \$50. This growth and resulting consumer benefits have occurred in an environment free from cumbersome and inconsistent state-by-state regulations.

Decentralized regulations are not effective "[w]hen economic realities dictate that production of goods is efficiently done across jurisdictions (i.e., economies of scale stretch beyond state borders.)" Allowing states and local governments to regulate national markets increases costs associated with advertising, pricing, and regulatory compliance. Thus, a balkanized regulatory framework increases the costs of deploying new and innovative services and can hinder consumers' access to the benefits of technical advancements.

In order for America to remain competitive in an increasingly global economy, the United States must work to promote the deployment of broadband services across a multiplicity of technological platforms. Broadband penetration in the United States is

<sup>&</sup>lt;sup>22</sup> See CTIA's Semi-Annual Wireless Industry Survey available at http://www.ctia.org/research\_statistics/index.cfm/AID/10030.

<sup>&</sup>lt;sup>23</sup> Thomas W. Hazlett, *Is Federal Preemption Efficient in Cellular Phone Regulation?*, AEI-Brookings Joint Center for Regulatory Studies, at 16 (Sept. 2003).

growing,<sup>24</sup> but that growth would be threatened by an uncertain regulatory regime, especially a regulatory regime with multiple state regulations or state interpretation of federal regulations. The Commission can best facilitate the advancement of emerging broadband technologies by developing a consistent national framework for broadband Internet access services.

## IV. THE COMMISSION SHOULD REGULATE THE BROADBAND MARKET WITH A LIGHT REGULATORY TOUCH

Consumers have multiple choices for their broadband needs. They may choose to obtain access to the IP network over DSL lines, cable modem service, or various wireless providers. The ability of consumers to choose their broadband provider from a variety of technology platforms and from different carriers within those platforms already has provided the competitive incentives for broadband providers to meet the needs of consumers. Although the Commission has a legitimate interest in protecting consumers, sound public policy requires that it intervene only where the market has not sufficiently protected consumers. The Commission should, therefore, regulate the broadband industry with a light regulatory touch, if it regulates at all.

<sup>&</sup>lt;sup>24</sup> U.S. broadband penetration grew to 63.76% in October 2005 among active Internet users according to research conducted by Neilsen/NetRatings and ITU data. *See* <a href="http://www.websiteoptimization.com/bw0511">http://www.websiteoptimization.com/bw0511</a>.

<sup>&</sup>lt;sup>25</sup> Wireline Broadband Order at ¶ 50 ("There are, however, other existing and developing platforms, such as satellite and wireless, and even broadband over power line in certain locations, indicating that broadband Internet access services in the future will not be limited to cable and DSL service. Changes in technology are spurring innovation in the use of networks.").

<sup>&</sup>lt;sup>26</sup> *Id.* at ¶ 57 ("[T]he threat of competition from other forms of broadband Internet access, whether satellite, fixed or mobile wireless, or a yet-to-be-realized alternative, will further stimulate deployment of broadband infrastructure, including more advanced infrastructure such as fiber to the home.").

# A. The Commission Should Create a Seamless Consumer Experience by "Regulating Down" to the Least Regulated Element of a Converged Service

Instead of using different devices for different voice, data, or video services, consumers increasingly are demanding one-stop access to voice, data, and video of their choice over the same device or a set of integrated devices utilizing the best available network infrastructure – whether that is, for example, mobile wireless or Wi-Fi connectivity. As discussed above, the growth of such services highlights the need for a deregulatory national framework for all broadband services. Where a service provider offers a converged service that allows customers changing locations to access the network over a variety of technology platforms, the Commission should allow consumers a seamless experience by "regulating down" to the least regulated element of that service. This approach will minimize consumer confusion about the rights and responsibilities that attach to services they purchase. From the consumer's perspective, the technology utilized to offer service does not make a difference. Thus, the Commission should allow for seamless regulation across multiple broadband platforms.

For example, if a consumer were to use a handset with CMRS voice capabilities along with WiFi technology, that handset could work seamlessly between the consumer's cellular or PCS service and a VoIP service provided over a wireless router and a wireline broadband connection in the home. From the consumer's perspective, as he or she steps five feet from the house, and switches from a WiFi VoIP network to a cellular network, there is no difference in the service that is being offered. Consumer electronic manufacturers are working to develop such technologies, which will allow for customer

<sup>&</sup>lt;sup>27</sup> See Roam Where you Want to! New Motorola Technologies Break the Barrier Between Home and Wireless Phone Services, available at

equipment to use the most efficient system available to provide service. By adopting a "regulate down" framework, the Commission can facilitate the rapid deployment of these devices. Regulating a converged service on the basis of the more heavily regulated technology will often burden and deter the development and deployment of seamless, efficient services.

### **B.** Competition Is Providing the Incentives for Broadband Providers to Meet the Needs of Consumers

A competitive market is the best tool for promoting social policy goals, and the broadband industry is poised for an explosive increase of competition among and between technology platforms. Competition between cable companies and incumbent telephone companies "has a statistically significant positive effect on overall broadband penetration in the United States." Added to this, wireless broadband services, whether fixed, mobile, or satellite, are emerging as viable competitors for broadband subscribers. Telephone companies are investing heavily in fiber to the home ("FTTH"). At the same time, the wireless industry is investing in new technologies such as OFDM, Wideband Code Division Multiple Access ("WCDMA"), EV-DO and others, to increase the potential for new and beneficial services for consumers.

Heavy handed regulation of the broadband market would only deter investment in new technologies and thus delay the consumer benefits from innovative services and technologies. Analysts have estimated the benefits of universal broadband to Americans

http://www.motorola.com/mediacenter/news/detail/0,,6258 6213 23,00.html. See also Wireless, VoIP Mix it Up at CES available at http://www.voip-magazine.com/content/view/1322/.

<sup>&</sup>lt;sup>28</sup> Wireline Broadband Order at ¶ 50 ("[T]here is increasing competition at the retail level for broadband Internet access service as well as growing competition at the wholesale level for network access provided by the wireline providers' intramodal and intermodal competitors.")

<sup>&</sup>lt;sup>29</sup> Robert W. Crandall, *Competition and Chaos, U.S. Telecommunications Since the 1996 Telecom Act*, The Brookings Institution (2005) ("Crandall") at 128.

to be as high as \$300 billion a year.<sup>30</sup> Beyond the every day benefits, ubiquitous broadband services have great potential to help the elderly and Americans with disabilities.<sup>31</sup> If the deployment of broadband services are delayed or reduced by burdensome regulations, the benefits of universal broadband service will be drastically reduced.<sup>32</sup>

Congress and the courts acknowledge that it is a policy of the United States to promote the development of the Internet and preserve the "vibrant and competitive" Internet market.<sup>33</sup> The Commission has recognized that it can best serve the public interest by allowing market conditions to drive the development of the broadband industry.<sup>34</sup> The Commission should continue to promote the competitive market for Internet services by developing a deregulatory national framework for broadband Internet access services.

#### C. While the Commission Has a Legitimate Interest in Promoting Consumer Welfare, Regulatory Mandates Should Be Imposed Only to Address Instances of Market Failure

The Commission has continually noted the benefits competition brings to protection of consumer interests.<sup>35</sup> And as CTIA previously observed, the Commission's

<sup>30</sup> Crandall at 126.

<sup>&</sup>lt;sup>31</sup> See Robert E. Litan, Great Expectations: Potential Economic Benefits to the Nation from Accelerated Broadband Deployment to Older Americans and Americans with Disabilities, New Millennium Research Council (2005) ("[T]he potential cumulative economic benefit of policies designed to accelerate broadband use for seniors and individuals with disabilities is comparable to what the federal government is likely to spend on homeland security measures during the next 25 years – an estimated \$620 billion.").

<sup>&</sup>lt;sup>32</sup> Crandall at 26 ("Even if the delay is just a few years, the present value of the losses to consumers and producers could be enormous, easily in the neighborhood of \$500 billion.").

<sup>&</sup>lt;sup>33</sup> 47 U.S.C. § 230(b)(1)&(2). ("It is the policy of the United States – to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.").

<sup>&</sup>lt;sup>34</sup> Wireline Broadband Order at ¶ 85 ("...we find that the public interest is best served if we permit competitive marketplace conditions to guide the evolution of broadband Internet access services.").

 $<sup>^{35}</sup>$  Tenth Annual CMRS Report at ¶ 132 ("As U.S. mobile penetration moves closer to the saturation point, competitive pressure to attract new customers and retain existing customers has resulted in concerted efforts by carriers to improve service quality.").

deregulatory approach towards the CMRS industry has promoted competition and consumer protection. <sup>36</sup>

A light regulatory framework for the broadband industry could achieve similar results. Like the wireless industry, the broadband industry is a nascent market and highly competitive, within and across multiple technology platforms. Although growth of broadband services in the United States has been impressive, there remains significant room for additional growth in the coming years. Just as with the CMRS experience, broadband service growth has occurred in an environment of minimal regulation. Now is not the time for cumbersome and costly regulatory mandates. A cumbersome framework for broadband would discourage investment and thus slow the introduction of new technologies and innovative services. On the other hand, a light regulatory touch, spurring competition, best ensures that consumers will continue to have a choice of carriers and innovative new services.

Absent evidence that the broadband marketplace is not protecting consumers, it is inappropriate at this time to impose burdensome regulations, such as CPNI, slamming, cramming, network outage reporting, section 214 discontinuance, and rate averaging upon broadband providers.<sup>37</sup> To the extent problems do arise, any regulations should be limited to those responsible for the harm and should be no more stringent than necessary to address the problem identified. If regulations of general application are deemed necessary, the Commission should define those objectives it wants broadband providers to fulfill, and then allow the industry flexibility in meeting those objectives.

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<sup>&</sup>lt;sup>36</sup> Comments of CTIA - The Wireless Association<sup>®</sup>, at 8, WC Docket No. 04-36 (filed May 28, 2004) ("IP-Enabled Services Comments").

<sup>&</sup>lt;sup>37</sup> Consumer Protection NPRM at ¶¶ 148-157.

## V. SOME RULE MODIFICATIONS ARE NECESSARY TO ENSURE THAT BROADBAND IS DEPLOYED

Although CTIA generally opposes regulations of broadband Internet access providers absent evidence of market failure, there are modifications to existing FCC rules that would facilitate the deployment of broadband services in both rural and non-rural areas.

# A. The Proliferation of Broadband Services Intensifies the Need to Eliminate Inequities in the Universal Service and Intercarrier Compensation Systems

The Commission's universal service and intercarrier compensation systems are remnants of a pre-divestiture regulatory structure designed to guarantee profits to inefficient wireline monopolies insulated from competition. The Commission should rethink how universal service is best achieved in the emerging multi-dimensional communications marketplace characterized by inter-modal competition and convergence. The FCC's universal service and intercarrier compensation regulations are premised on artificial regulatory distinctions across technologies that hinder efficient broadband deployment by favoring inefficient wireline networks. These systems encourage and reward inefficient investment by incumbent wireline carriers (particularly rate-of-return and rural incumbent LECs), which translates to less value, innovation, and choices for consumers – especially those located in rural, high-cost areas. To the extent these systems subsidize wireline incumbent LECs, but not other carriers, it creates artificial incentives for consumers to use wireline technologies and discourages market entry by wireless broadband providers. Without reform, the proliferation of the very types of efficient and innovative broadband services that universal service and competition policies are meant to promote will be slowed.

CTIA has put forth a market-driven proposal to reform the intercarrier compensation and universal service systems that would: (1) eliminate arbitrary regulatory distinctions; (2) encourage and reward carrier efficiency; and (3) reduce administrative complexity. First, the Commission should transition to a Mutually Efficient Traffic Exchange ("METE") system for intercarrier compensation.<sup>38</sup> CTIA's proposal would establish a basic obligation for an originating provider to assume the costs of delivering traffic to the terminating provider's "network edge," provide for nondiscriminatory points of interconnection, and set federal rates for transit/transport based on efficient (forward-looking) costs. No exceptions to these obligations would be available for any category of telecommunications provider (*e.g.*, rural incumbent LECs). At the same time, local exchange carriers should have flexibility to recover more of their network costs from their own end-user customers.<sup>39</sup>

Second, the universal service system should be modified from a system with five high-cost mechanisms largely based on embedded costs to a unified mechanism that calculates support for both incumbents and competitors based on the most efficient technology (whether wireline or wireless) for a given geographic area. The current "all you can eat" system rewards inefficiency and ultimately harms consumers, who ultimately fund universal service through line items on their bills. It is critical that regulatory policies ensure all consumers can reap benefits from the multi-dimensional communications marketplace and increased pass-through charges simply make new and innovative services less affordable for end-users. As such, no mechanism should be off

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<sup>&</sup>lt;sup>38</sup> Comments of CTIA – the Wireless Association<sup>®</sup>, at 10, CC Docket No. 01-92, (May 23, 2005) ("Intercarrier Compensation Comments").

<sup>&</sup>lt;sup>39</sup> Id. at 6

 $<sup>^{40}</sup>$  Comments of CTIA – The Wireless Association  $^{\circledR}$ , at 2-3, CC Docket No. 96-45, (Sept. 30, 2005) ("High Cost Comments").

limits from reform, and support should be targeted only to where it is needed and no higher than necessary to achieve the goals of universal service.<sup>41</sup> CTIA also is open to discussion and debate regarding other market-driven proposals (such as competitive bidding) to encourage efficiency and reduce demand for universal service over time.

#### B. The FCC Should Ensure that Wireless Carriers Have Access to Sufficient Spectrum and Are Subject to Technology-Neutral Technical Rules

The Commission must ensure that wireless carriers have access to the spectrum they need. As the Commission has previously noted, access to sufficient spectrum is a "crucial ingredient" to wireless broadband. The availability of licensed spectrum assists service providers by ensuring a predictable spectrum environment and protection from interference. As such, the Commission should continue to promote new and innovative services by holding the June 2006 Advanced Wireless Services ("AWS") auction on schedule.

Further, CTIA recommends that the Commission modify certain technical rules (*e.g.*, base station radiated power limits) to promote rural broadband deployment. The Commission should modify its EIRP rules to allow base stations to transmit at either (1) the current limits, or (2) a comparable power spectral density.<sup>43</sup> A power spectral density limit would facilitate the use of new wideband technologies that are restricted under the current rule.

<sup>41</sup> To that end, absent clear, convincing, and prolonged evidence of market failure, the Commission should not create any new universal service mechanisms to subsidize broadband deployment.

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<sup>&</sup>lt;sup>42</sup> Wireless Broadband Access Task Force, Federal Communications Commission, *Connected & On the Go – Broadband Goes Wireless* (Feb. 2005) ("WBATF Report") at 46.

<sup>&</sup>lt;sup>43</sup> *See* Letter from Paul Garnett, CTIA-The Wireless Association®, to Marlene Dortch, FCC, WT Docket No. 03-264 (filed Oct. 20, 2004).

#### VII. Conclusion

CTIA urges the Commission to adopt a national deregulatory framework for all broadband Internet access services, regardless of the underlying technology. This will ensure the continued deployment of new and innovative services utilizing the most efficient technologies available.

Respectfully Submitted,

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